

# **EXHIBITS**

## **IN SUPPORT OF** **PETITIONERS**

### **§2255 MOTION**

**TABLE OF CONTENTS OF EXHIBITS**

- 1. 21 U.S.C. §851 NOT ICE AND CERTIFIED DOCKET SHEET  
FROM COOK COUNTY, ILL.**
- 2. DOCKET SHEET USA V. ADDISON, ET AL., 1:01CR9.**
- 3. EXCERPTS OF TRIAL TRANSCRIPT NOVEMBER 13, 2001.**
- 4. EXCERPTS OF TRIAL TRANSCRIPT NOVEMBER 14, 2001.**
- 5. PLEA AGREEMENT.**
- 6. PROBATION OFFICER LETTER DATED FEBRUARY 27,  
2002, MINOR ROLE ADJUSTMENTS.**
- 7. U.S. DISTRICT COURT ORDER, DATED JUNE 26, 2001.**

FILED

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

AUG 24 2001

KENNETH J. MURPHY, Clerk  
CINCINNATI, OHIO

UNITED STATES OF AMERICA	:	Criminal No. CR-1-01-009
	:	
	:	(Spiegel, J.)
vs.	:	
	:	INFORMATION
	:	
ISADORE GENNINGS	:	21 U.S.C. § 851

-----

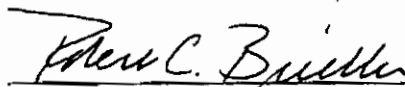
Now comes the United States of America through its attorney, the United States Attorney for the Southern District of Ohio, and files with the Court pursuant to 21 U.S.C. § 851 information that ISADORE GENNINGS, the defendant herein, stands convicted of a prior felony drug offense under the laws of the State of Illinois and therefore is liable for the enhanced punishment of a mandatory twenty years in prison pursuant to 21 U.S.C. § 841 (b) (1) (A).

The conviction upon which the government relies is ISADORE GENNINGS' conviction in the Circuit Court of Cook County, Illinois to wit; Case #91CR0864002 sentence imposed September 26, 1991 on the charge of possession of a controlled substance in violation of the laws of the State of Illinois.

Copies of the judgement entries are attached hereto.

Respectfully submitted,

GREGORY G. LOCKHART  
United States Attorney

  
Robert C. Brächler #0017745  
Assistant U.S. Attorney  
100 E. Fifth Street Room 220  
Cincinnati, Ohio 45202

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Information was hand delivered and mailed to counsel for the defendant, Alvertis W. Bishop, Suite 1300, 30 East Cental Parkway, Cincinnati, Ohio 45202 by regular U.S. Mail on the 24th day of August 2001.



Robert C. Brichler #0017745  
Assistant U.S. Attorney

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

Page 001

PEOPLE OF THE STATE OF ILLINOIS

VS

NUMBER 91CR0864002

ISADORE

JENNINGS

## CERTIFIED STATEMENT OF CONVICTION / DISPOSITION

I, DOROTHY BROWN, Clerk of the Circuit Court of Cook County, Illinois, and keeper of the records and seal thereof do hereby certify that the electronic records of the Circuit Court of Cook County show that:

The States Attorney of Cook County filed an INDICTMENT/INFORMATION with the Clerk of the Circuit Court.

Charging the above named defendant with:

A 56.5 1402-C

1996

PCS ANY OTHR AMT CONTR

The following disposition(s) was/were rendered before the Honorable Judge(s):

04/15/91 IND/INFO-CLK OFFICE-PRES JUDGE FITZGERALD, THOMAS R.	05/03/91 1701	
05/03/91 DEFENDANT NOT ARRAIGNED BASTONE, ROBERT P.		
05/03/91 CASE ASSIGNED BASTONE, ROBERT P.	05/15/91 1740	
05/15/91 PUBLIC DEFENDER APPOINTED DERNBACH, DENNIS A.		
05/15/91 DEFENDANT ARRAIGNED DERNBACH, DENNIS A.		
05/15/91 PLEA OF NOT GUILTY DERNBACH, DENNIS A.		
05/15/91 CONTINUANCE BY AGREEMENT DERNBACH, DENNIS A.	06/05/91	
06/05/91 DEFENDANT ON BOND DERNBACH, DENNIS A.		
06/05/91 MOTION TO SUPPRESS DERNBACH, DENNIS A.	E	2
06/05/91 CONTINUANCE BY AGREEMENT DERNBACH, DENNIS A.	06/26/91	
06/26/91 DEFENDANT ON BOND DERNBACH, DENNIS A.		
06/26/91 MOTION TO SUPPRESS DERNBACH, DENNIS A.	E	2
06/26/91 CONTINUANCE BY AGREEMENT DERNBACH, DENNIS A.	07/22/91	
07/22/91 MOTION TO SUPPRESS DERNBACH, DENNIS A.	E	2
07/22/91 CONTINUANCE BY AGREEMENT DERNBACH, DENNIS A.	08/21/91	

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
 PEOPLE OF THE STATE OF ILLINOIS

Page 002

VS

NUMBER 91CR0864002

ISADORE JENNINGS

## CERTIFIED STATEMENT OF CONVICTION / DISPOSITION

I, DOROTHY BROWN, Clerk of the Circuit Court of Cook County, Illinois, and keeper of the records and seal thereof do hereby certify that the electronic records of the Circuit Court of Cook County show that:

The States Attorney of Cook County filed an INDICTMENT/INFORMATION with the Clerk of the Circuit Court.

08/21/91 MOTION TO SUPPRESS DERNBACH, DENNIS A.	E	2	
08/21/91 CONTINUANCE BY AGREEMENT DERNBACH, DENNIS A.	09/26/91		
09/26/91 CHARGE AMENDED DERNBACH, DENNIS A.	C001		
09/26/91 PG JW FINDING GUILTY DERNBACH, DENNIS A.	C001		
09/26/91 DEF SENTENCED TO PROBATION 18 MTH DERNBACH, DENNIS A.	C001		
09/26/91 CRIME LAB FEE ASSESSED DERNBACH, DENNIS A.			\$ 50
09/26/91 MONTHLY PROBATION FEE ASSESSED PER MONTH DERNBACH, DENNIS A.			\$ 10
09/26/91 CHANGE PRIORITY STATUS DERNBACH, DENNIS A.	M		
09/26/91 DEF ADVISED OF RIGHT TO APPEAL DERNBACH, DENNIS A.			
11/18/92 PET VIOL OF PROBATION FILED DERNBACH, DENNIS A.			
11/18/92 PETITION FOR V.O.P. ALLOWED DERNBACH, DENNIS A.			
11/18/92 NO BAIL DERNBACH, DENNIS A.			
11/18/92 WARRANT, VIOLATION OF PROB DERNBACH, DENNIS A.			
04/29/94 WARR RETURNED, EXECUTED, FILED DERNBACH, DENNIS A.	W001		
04/29/94 REINSTATEMENT - VIOL PROBATION DERNBACH, DENNIS A.	C001	05/02/94	1740
05/02/94 DEFENDANT IN CUSTODY DERNBACH, DENNIS A.			
05/02/94 PRISONER DATA SHEET TO ISSUE DERNBACH, DENNIS A.			
05/02/94 CONTINUANCE BY AGREEMENT DERNBACH, DENNIS A.	05/24/94		

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
PEOPLE OF THE STATE OF ILLINOIS

Page 003

VS

NUMBER 91CR0864002

ISADORE JENNINGS

CERTIFIED STATEMENT OF CONVICTION / DISPOSITION

I, DOROTHY BROWN, Clerk of the Circuit Court of Cook County, Illinois, and keeper of the records and seal thereof do hereby certify that the electronic records of the Circuit Court of Cook County show that:

The States Attorney of Cook County filed an INDICTMENT/INFORMATION with the Clerk of the Circuit Court.

05/24/94 PG, FG TO VOP

05/24/94 VIOL PROB - CCDOC

C001

26 DYS

05/24/94 DEF SENTENCED TO PROBATION

C001

12 MTH

05/24/94 CREDIT DEFENDANT FOR TIME SERV

26 DAYS 02 521

Y

04/24/95 PET VIOL OF PROBATION FILED

04/24/95 PROB HEARING DATE ASSIGNED

05/15/95 1740.

05/15/95 PROB TERMINATED- SATISFACTORY  
DERNBACH, DENNIS A.

I hereby certify that the foregoing has  
been entered of record on the above  
captioned case.  
Date 03/29/01



*Dorothy Brown*  
DOROTHY BROWN  
CLERK OF THE CIRCUIT COURT OF COOK COUNTY

Proceedings include all events.

1:01cr9-ALL USA v. Addison, et al

APPEAL

1/24/01 1 Application and AFFIDAVIT of Don Filer re Express mailby plaintiff USA  
[ 1:01-m -9 ] (jan) [Entry date 01/24/01]

1/24/01 -- Search Warrant issued by Mag. Judge Jack Sherman  
[ 1:01-m -9 ] (jan) [Entry date 01/24/01]

1/24/01 2 Application & AFFIDAVIT of Don Filer by plaintiff USA re tracking device  
[ 1:01-m -9 ] (jan) [Entry date 01/24/01]

1/24/01 3 ORDER for tracking device by Mag. Judge Jack Sherman (cc: all counsel)  
[ 1:01-m -9 ] (jan) [Entry date 01/24/01]

1/26/01 4 SEARCH Warrant returned executed 1/24/01  
[ 1:01-m -9 ] (jan) [Entry date 01/26/01]

1/26/01 5 tracking device Warrant returned executed 1/24/01  
[ 1:01-m -9 ] (jan) [Entry date 01/26/01]

1/30/01 1 COMPLAINT and affidavit issued by Mag. Judge Timothy S. Hogan  
[ 1:01-m -14 ] (ba) [Entry date 01/30/01]

- 1/30/01 1 COMPLAINT issued by Mag. Judge Timothy S. Hogan  
[ 1:01-m -15 ] (ba) [Entry date 01/30/01]

- 1/30/01 1 COMPLAINT issued by Mag. Judge Timothy S. Hogan  
[ 1:01-m -12 ] (ba) [Entry date 01/30/01]

- 1/30/01 1 COMPLAINT and affidavit issued by Mag. Judge Timothy S. Hogan  
[ 1:01-m -13 ] (ba) [Entry date 01/30/01]

1/30/01 2 MINUTES: Case called for an initial appearance before Mag. Judge Timothy S. Hogan ; counsel present; dft informed of her rights and provided a copy of charging documents; Gov't moved for a detention hearing; deft to be detained pending detention hearing set before MJ Sherman, 2/2/01 at 1:30 pm, Courtroom 708, as to Nekia Barney  
[ 1:01-m -13 ] (ba) [Entry date 01/30/01]

1/30/01 2 MINUTES: Case called for an initial appearance before Mag. Judge Timothy S. Hogan; counsel present; deft informed of his rights and provided a copy of charging document; Financial affidavit present and CJA appointment granted; Gov't moved for temporary detention pursuant to a detention hearing; detention hearing set 2/2/01 at 1:30 before MJ Sherman, Courtroom 708  
[ 1:01-m -14 ] (ba) [Entry date 01/30/01]

851 { 841 (b) (1) (2) }

11/08/2004	<u>202</u>	SENTENCING MEMORANDUM by USA as to Isadore Gennings (Brichler, Robert) (Entered: 11/08/2004)
11/10/2004	<u>203</u>	Minute Entry for proceedings held before Judge S Arthur Spiegel: Re-Sentencing (On Remand from COFA Sixth Circuit) held 11/9/2004. Defendant appeared with counsel. Opening statements heard. Testimony presented by Government - Agent Bernard Erwin. Closing arguments heard. The Court Orders in open Court that based on the record and testimony provided, the defendant does not qualify for a safety valve reduction of sentence pursuant to Guideline 5C1.2. The original sentence of 240 months jail stands. If the sentencing guidelines are later determined to be unconstitutional or inapplicable, the Court would sentence the defendant to 10 years jail. Written Order to follow. (Court Reporter Mary Ann Ranz (Official).) (km, ) Additional attachment(s) added on 11/10/2004 (km, ). (Entered: 11/10/2004)
11/16/2004	<u>204</u>	ORDER as to Isadore Gennings. Pursuant to the hearing held 11/9/2004, the Court finds that Defendant is not entitled to a downward departure. Accordingly, Defendants sentence remains at the two-hundred and forty (240) months originally imposed by this Court on 3/14/2002 [148]. However, if the federal sentencing guidelines are determined in the future to be unconstitutional or illegal, the Court imposes a sentence of one-hundred and twenty (120) months. Defendants Motion for a Downward Departure as contained in the Sentencing Memorandum <u>201</u> is hereby DENIED. Signed by Judge S Arthur Spiegel on 11/16/2004. (km, ) (Entered: 11/16/2004)
11/24/2004	<u>205</u>	NOTICE OF APPEAL by Isadore Gennings re <u>204</u> Order. (Hudson, C) Modified on 11/30/2004 (kej, ). (Entered: 11/24/2004)
11/30/2004		Transmission of Notice of Appeal and Docket Sheet as to Isadore Gennings to US Court of Appeals re <u>205</u> Notice of Appeal - Final Judgment (kej, ) (Entered: 11/30/2004)
12/10/2004		USCA Case Number as to Isadore Gennings 04-4501 for <u>205</u> Notice of Appeal - Final Judgment filed by Isadore Gennings,. (kej, ) (Entered: 12/14/2004)
12/27/2004	<u>206</u>	TRANSCRIPT REQUEST by Isadore Gennings for proceedings held on 11/9/04 before Judge S. Arthur Spiegel, re <u>205</u> Notice of Appeal - Final Judgment (wam, ) (Entered: 01/04/2005)
02/18/2005	<u>207</u>	TRANSCRIPT of Proceedings (Re-Sentencing Hearing) as to Isadore Gennings held on 11/9/2004 before Judge S. Arthur Spiegel. Court Reporter: Mary Ann Ranz (Official). (km, ) (Entered: 02/18/2005)
07/28/2005		Certified and Transmitted Record on Appeal as to Isadore Gennings to US Court of Appeals re <u>205</u> Notice of Appeal - Final Judgment (kej, ) (Entered: 07/28/2005)

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

- - -

UNITED STATES OF AMERICA, : NO. CR-1-01-009-3  
:   
Plaintiff, :   
: Cincinnati, Ohio  
:   
-vs- : Tuesday, November 13, 2001  
:   
ISADORE GENNINGS, : DAY 1 - JURY TRIAL  
:   
Defendant. : VOLUME I  
:   
- - -

TRANSCRIPT OF PROCEEDINGS

BEFORE THE HONORABLE S. ARTHUR SPIEGEL, JUDGE

TRANSCRIPT ORDERED BY: Alvertis W. Bishop, Esq.

For the Plaintiff: Robert C. Brichler, Esq.  
Anthony Springer, Esq.  
221 East Fourth Street  
Suite 400  
Cincinnati, Ohio 45202  
  
For the Defendant: Alvertis W. Bishop, Jr., Esq.  
1300 American Building  
30 East Central Parkway  
Cincinnati, Ohio 45202  
  
Clerk: Vicki Penley  
  
Court Reporter: Connie J. Hueber  
Ace Reporting Services  
  
Law Clerk: Jeremy Wilson

I N D E X

Opening Remarks	PAGE
By The Court	4
Voir Dire Examination	
By Mr. Brichler	7, 39, 50
By Mr. Bishop	21, 44, 51
By The Court	53
Preliminary Instructions	
By The Court	56
Opening Statement	
By Mr. Brichler	77
<u>WITNESSES</u>	
JEFFREY WAYNE HILL	
Direct Examination by Mr. Springer	94
Cross-Examination by Mr. Bishop	123
BETH ANN LOGAN	
Direct Examination by Mr. Springer	129
Cross-Examination by Mr. Bishop	136
Redirect Examination by Mr. Springer	140
NEKIA BARNEY	
Direct Examination by Mr. Brichler	144
GREGORY W. MORGAN	
Direct Examination by Mr. Springer	158
Cross-Examination by Mr. Bishop	183

	<u>EXHIBITS</u>		<u>MARKED</u>	<u>RECEIVED</u>
1				
2	Plaintiff's Exhibit	1	174, 177, 184	176
	Plaintiff's Exhibit	2	174, 178, 184	176
3	Plaintiff's Exhibit	3	174, 175, 178	176
			184	
4	Plaintiff's Exhibit	4	174, 175, 178	176
			184	
5	Plaintiff's Exhibit	5	174, 175, 178	176
			184	
6	Plaintiff's Exhibit	6	174, 175, 178	176
			184	
7	Plaintiff's Exhibit	7	174, 175, 178	176
			184	
8	Plaintiff's Exhibit	8	174, 175, 176,	176
			179, 184	
9	Plaintiff's Exhibit	9	175, 180	-
	Plaintiff's Exhibit	10	-	-
10	Plaintiff's Exhibit	11	98, 100, 121	100
	Plaintiff's Exhibit	12	108, 131, 137	-
11	Plaintiff's Exhibit	13	108, 110, 113, 122	-
			124, 127, 132	
12	Plaintiff's Exhibit	14	108, 114, 123, 132	-
			133, 137	
13	Plaintiff's Exhibit	15	108, 115, 123, 132	-
			134, 138	
14	Plaintiff's Exhibit	16	108, 115, 117, 118	-
			123, 132, 134, 136	
15	Plaintiff's Exhibit	17	108, 115, 118, 123	-
			132, 135, 136	
16	Plaintiff's Exhibit	18	108, 119, 123, 132	-
			135, 136	
17	Plaintiff's Exhibit	19	108, 120, 123, 132	-
			135, 136	
18	Plaintiff's Exhibit	20	108, 120, 123, 132	-
			135, 136	
19				
20				
21		- - -		
22				
23				
24				

1 deliberating, it's not what somebody has written down  
2 on a piece of paper that is the evidence, it's what  
3 your collective recollection of what took place in  
4 the courtroom is. So, under the circumstances in  
5 this case, there is to be no note-taking.

6 All right. Mr. Brichler, let's go.

7 MR. BISHOP: Your Honor, may it please the  
8 Court, may counsel approach the bench on the record?

9 THE COURT: Yeah.

10 SIDEBAR CONFERENCE.

11 MR. BISHOP: Your Honor, I thought I should  
12 call this to your attention on the record. Your  
13 order of March 14th of this year on the various  
14 discovery and evidentiary motions I had filed and  
15 among other things, there was a conclusion in here  
16 that there was not going to be testimony by  
17 co-conspirators, therefore, a certain item of  
18 discovery I wanted was overruled at that time.

19 Now, of course we find that we have  
20 co-conspirators testifying and I wanted to call that  
21 to the Court's attention. I believe the defense case  
22 to be prejudiced by that having happened, and I would  
23 -- therefore, I object to the co-conspirators  
24 testifying, sir, and I have your order.

1 THE COURT: Thanks, Miss Barney. Now, if you  
2 would keep your voice up, he is going to ask you some  
3 questions, and the jury wants to hear everything you  
4 have to say.

5 THE WITNESS: Okay.

6 THE COURT: Would you be more comfortable in  
7 holding that in your hand?

8 THE WITNESS: That's fine.

9 THE COURT: Go ahead, Mr. Brichler.

10 MR. BRICHLER: Thank you, Your Honor. Your  
11 Honor, I would like the record to reflect that I have  
12 provided Mr. Bishop with the 3500 material.

13 THE COURT: You have provided him with what?

14 MR. BRICHLER: The Jencks material.

15 THE COURT: I didn't understand your question.

16 MR. BRICHLER: I said I would like the record  
17 to reflect that I have provided Mr. Bishop with the  
18 Jencks material for this witness.

19 THE COURT: Oh, okay, I would assume that you  
20 have done that. I didn't -- you didn't have to  
21 advise the Court. Is that all the Jencks material in  
22 this case?

23 MR. BRICHLER: For this witness.

24 THE COURT: Okay. Are you just doing it

1 witness by witness, or did you give him all the  
2 Jencks material before?

3 MR. BRICHLER: No, I have given him this  
4 witness'.

5 THE COURT: So, just this witness?

6 MR. BRICHLER: Right.

7 THE COURT: All right. Have you had a chance  
8 to review it, Mr. Bishop?

9 MR. BISHOP: Well, of course not, Your Honor.  
10 It was handed to me ten seconds ago. I read fast,  
11 but not that fast.

12 THE COURT: Well, I would like you, if you can,  
13 to give the counsel the Jencks material sometime  
14 before, so he can have a chance to review it before  
15 the witness testifies. So let's move on, Mr.  
16 Brichler.

17 MR. BISHOP: Your Honor, I'm begging the Court.

18 THE COURT: He has done it within the law.  
19 There's a statute that says it should be furnished to  
20 counsel at the time the witness testifies, or after  
21 the witness is finished on direct examination, so  
22 let's proceed.

23 MR. BISHOP: Very well, Your Honor.

24 MR. BRICHLER: Thank you, Your Honor.

1 THE COURT: Okay. What's your response?

2 MR. BRICHLER: I don't know what he is talking  
3 about.

4 THE COURT: I couldn't hear you.

5 MR. BRICHLER: I don't know what he is talking  
6 about.

7 MR. BISHOP: Give me a second. Shall I read  
8 this verbatim?

9 THE COURT: Go ahead read it in the record.

10 MR. BISHOP: Subparagraph C of your order of  
11 March 2001. The motion says, "Defendant filed a  
12 Motion for Notice of the Government's intention to  
13 use evidence pursuant to Federal Criminal Rule  
14 12(d)(2) requesting that the government provide to  
15 defendant its evidence-in-chief that will be  
16 presented at trial, so that the defendant may raise  
17 objections prior to trial, under Rule 12(b) of the  
18 Federal Rules of Criminal Procedure, document 21.

19 "On February 22nd, 2001, the government  
20 submitted its response, specifically stating that it  
21 intends to use the items provided in discovery in  
22 this case in chief, document 25. In addition, the  
23 government does not intend to use statements made  
24 co-conspirators under Rule 801(d)(2)(E) as part of

1 the conspiracy charged in the indictment. Having  
2 reviewed this matter, the Court finds that the  
3 government's response meets the requirements Rule 12  
4 of the Federal Rules of Criminal Procedure, and thus,  
5 defendant's motion for notice of intention is hereby  
6 denied at this time, Document 21 for the reasons  
7 stated in the government's response brief."

8 Okay, at that time I'm sure that's the correct  
9 ruling, but now it's not.

10 THE COURT: What's the situation?

11 MR. BRICHLER: I don't understand the content  
12 of the ruling. I don't remember the context of what  
13 the motion was, but my guess is that the motion had  
14 to do with whether or not I was going to attempt to  
15 introduce 404(b) evidence in my case in chief and my  
16 response would be, we don't intend to rely on 404(b)  
17 at all, that any --

18 THE COURT: What is he talking about  
19 co-conspirators to me?

20 MR. BRICHLER: I don't understand what context  
21 this is in.

22 MR. BISHOP: I submit to you that the order  
23 speaks for itself and you said in your order, "In  
24 addition, the government does not intend to use

1 statements made by co-conspirators under Rule  
2 801(d)(2)(E)." I don't know where 404 came from  
3 here, but that's what it says. And what I'm saying  
4 to you, sir, I feel the defense's position is  
5 compromised because --

6 THE COURT: Well, I tell you what. If you feel  
7 that way, let this witness stand off the stand and he  
8 will give you the material tonight and you can review  
9 it and prepare accordingly, and if you need a  
10 continuance of the trial because of this, I will  
11 consider that tomorrow.

12 MR. BISHOP: Thank you, Judge.

13 THE COURT: I don't think frankly --

14 MR. BRICHLER: It doesn't make sense.

15 THE COURT: And as it's been said from the  
16 beginning, this is a conspirator case and there's  
17 going to be testimony from the co-conspirators that  
18 have pled guilty in this case. You should not be  
19 surprised by that, I don't think.

20 MR. BISHOP: No, sir.

21 THE COURT: I don't know what statements he  
22 gave to you other than the Jencks Act material and he  
23 has furnished you with the Jencks Act material.

24 MR. BISHOP: On this witness only.

1 THE COURT: Are you going to have any other  
2 witnesses?

3 MR. BRICHLER: I'm going to comply with the  
4 law, Judge, as best I see at the time.

5 THE COURT: You furnished the Jencks Act  
6 material. Are there any other co-conspirators that  
7 are going to testify?

8 MR. BRICHLER: I said in my opening statement  
9 that I would call Lashon --

10 THE COURT: I'm asking for the record now.

11 MR. BRICHLER: Okay. I will call Lashon  
12 Patterson and I will call Robert Addison, both of  
13 them.

14 THE COURT: Okay. Have you got any Jencks Act  
15 material.

16 MR. BRICHLER: I do.

17 THE COURT: Has he seen them?

18 MR. BRICHLER: I'm not prepared to give it out  
19 yet.

20 THE COURT: Well, call your next witness and we  
21 will excuse this lady from the witness stand until he  
22 has a chance to review it, so he won't be prejudiced  
23 and you can recall her. But at this time you can  
24 call somebody else.

1 MR. BRICHLER: Judge, I would like to have time  
2 to look at the motion.

3 THE COURT: All right. You've got this evening  
4 to do that.

5 MR. BRICHLER: Yeah. I don't know what that is  
6 all about. I don't understand that. There is no way  
7 we would ever in a conspiracy case represent to the  
8 Court that I would not use conspiracy.

9 THE COURT: Well, I must have picked up  
10 something you said in our order.

11 MR. BRICHLER: Okay.

12 MR. BISHOP: Thank you, Your Honor.

13 THE COURT: I'm going to excuse this witness  
14 from the stand. Have you got somebody else ready?

15 MR. BRICHLER: Yes.

16 CONCLUSION OF SIDEBAR CONFERENCE.

17 THE COURT: I'm going to excuse you from the  
18 witness stand this afternoon and I would like for you  
19 to be available tomorrow morning. Would you -- is  
20 that convenient for you?

21 THE WITNESS: Yes, sir.

22 THE COURT: All right. You're excused. Call  
23 your other witness, please.

24 MR. SPRINGER: The government calls --

1 The second question will be, what's it about.  
2 And as soon as -- if you answer that question, you're  
3 going to get into a conversation that you're not  
4 supposed to be in, in talking about this case, which  
5 you're not supposed to talk about with anybody, or  
6 even really think about too much, until you go up in  
7 the jury room to begin deliberations. And now you  
8 all understand why. So be very careful about that.  
9 Don't talk about the case. Don't let anybody talk  
10 about it in your presence, or try and draw you out,  
11 with all their experiences that they had on juries  
12 and criminal cases, and other situations. You can  
13 see how that might not be of any value to you, but  
14 may confuse you. And I hope you have a pleasant  
15 evening. We will see you tomorrow morning at 8:00.  
16 Continue to keep an open mind. Thank you.

17 THE DEPUTY CLERK: All rise for the jury. Are  
18 we starting at 8:00 in the morning or 9:00?

19 THE COURT: Did I say 8:00? I meant 9:00.

20 (At 4:31, the jury left the courtroom.)

21 MR. BRICHLER: May I have one moment? This is  
22 about the sidebar question that we had before.

23 THE COURT: All right.

24 MR. BRICHLER: I had filed a response in

1 connection with Mr. Bishop's motion for those -- to  
2 produce evidence. I provided him with discovery with  
3 all the items that we were going to use in our case  
4 in chief, in my response, I state that. And then it  
5 goes on to say that it does -- does intend to use  
6 statements made by co-conspirators under Rule  
7 801(d)(2)(E) of the Federal Rules of Evidence as part  
8 of the conspiracy.

9 So, to the extent that the order reflects that  
10 the government stated otherwise --

11 THE COURT: That sounds like the order is in  
12 error then, sorry.

13 MR. BRICHLER: That's correct. I just wanted  
14 to make that clear.

15 THE COURT: If Mr. Bishop was misled by that,  
16 it was my fault, and I will give you the time this  
17 evening to -- whatever you want to do, to get the  
18 information you need, so that you can prepare. Do  
19 you need any further time?

20 MR. BISHOP: No, Your Honor, I will be ready in  
21 the morning.

22 THE COURT: All right.

23 MR. BISHOP: Since the Jencks Act material has  
24 been provided.

1 THE COURT: I appreciate your calling my  
2 attention to it and I'm sorry for the error on behalf  
3 of the Court.

4 MR. BISHOP: Under what circumstances might I  
5 obtain the Jencks Act material for Lashon Patterson?

6 THE COURT: Are you familiar with the statute?

7 MR. BISHOP: Yes, sir.

8 THE COURT: Years ago, my colleague across the  
9 river, Judge Bertelsman, who was very, very that  
10 opinion about the wisdom of requiring the United  
11 States Attorneys to furnish the Jencks Act material a  
12 good deal before the trial of the case, because it  
13 would save so much time on the part of the court, the  
14 jury, and everybody else if the defense counsel had  
15 an opportunity to review all that material ahead of  
16 time.

17 Well, I must say after that opinion was  
18 reversed by the Sixth Circuit Court of Appeals in a  
19 very short, strict fashion. The statute is very  
20 clear. So it's pretty much up to the good graces of  
21 the U.S. Attorney's office as to when they turn that  
22 over.

23 And it's always been my experience, Mr.  
24 Brichler, in the cases I have handled, that

1 generally, currently, the Jencks Act is turned over  
2 the morning of the trial, at least no later than the  
3 morning of the trial so that the defense counsel can  
4 be prepared.

5 MR. BRICHLER: Your Honor, I will do my level  
6 best to keep the trial moving. We're talking about  
7 the statute --

8 THE COURT: All I can do is hope that you will  
9 try to accommodate Mr. Bishop so he can be prepared,  
10 and we don't have to stop at the conclusion of direct  
11 examination for him to spend a half day reading a lot  
12 of the material before he starts his cross-  
13 examination.

14 MR. BRICHLER: I understand that, Your Honor,  
15 but you know the reason for the statute was initially  
16 because the government was losing witnesses --

17 THE COURT: Right.

18 MR. BRICHLER: -- before trial, and there were  
19 threats being made of witnesses.

20 THE COURT: This Court does not reflect on Mr.  
21 Bishop, but other people.

22 MR. BRICHLER: No, it doesn't, but I must say  
23 that I have already had one witness in this case  
24 indicate that threats have been made and I'm going to

1 do it when I think it's appropriate.

2 THE COURT: Does Mr. Bishop know about this?

3 MR. BRICHLER: No, he doesn't.

4 THE COURT: Well, that's something you all can  
5 take out of the hearing of the Court, but I have to  
6 rely on the U.S. Attorney's good judgment on this.  
7 Mr. Bishop, you can understand why.

8 MR. BISHOP: Yes, Your Honor, I do appreciate  
9 your help. Thank you.

10 THE CLERK: All rise. (4:35 p.m.)

11 - - -

12 JURY TRIAL CONTINUED IN PROGRESS UNTIL  
13 WEDNESDAY, NOVEMBER 14, 2001 AT 9:00 A.M.

14 - - -

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF OHIO  
3 WESTERN DIVISION  
4 - - -

5 UNITED STATES OF AMERICA, : NO. CR-1-01-009-3  
6 Plaintiff, :  
7 : Cincinnati, Ohio  
8 -vs- : Wednesday, November 14, 2001  
9 : TESTIMONY OF ROBERT ADDISON  
10 ISADORE GENNINGS, : AND LASHON PATTERSON  
11 Defendant. :  
12 - - -

12 EXCERPT OF PROCEEDINGS  
13 BEFORE THE HONORABLE S. ARTHUR SPIEGEL, JUDGE  
14 TRANSCRIPT ORDERED BY: Robert C. Brichler, Esq. (AUSA)

14 APPEARANCES:

15 For the Plaintiff: Robert C. Brichler, Esq.  
16 Anthony Springer, Esq.  
17 221 East Fourth Street  
Suite 400  
Cincinnati, Ohio 45202  
18 For the Defendant: Alvertis W. Bishop, Jr., Esq.  
19 1300 American Building  
30 East Central Parkway  
Cincinnati, Ohio 45202  
20 Clerk: Vicki Penley  
21 Court Reporter: Connie J. Hueber  
22 Ace Reporting Services  
23 Law Clerk: Jeremy Wilson  
24

COPY

1 MR. BRICHLER: The United States calls Robert  
2 Addison.

3 THE COURT: Is someone getting him?

4 MR. BRICHLER: Yes, Your Honor.

5 THE CLERK: Please raise your right hand.

6 (The witness was sworn.)

7 THE COURT: Would you state your full name,  
8 please?

9 THE WITNESS: Robert Addison.

10 THE COURT: And spell your last name for the  
11 court reporter.

12 THE WITNESS: A-d-d-i-s-o-n.

13 THE COURT: Thank you, Mr. Addison. You may  
14 proceed, Mr. Brichler.

15 MR. BRICHLER: Thank you, Your Honor.

16 ROBERT ADDISON

17 a witness herein, having previously been sworn, testified as  
18 follows:

19 DIRECT EXAMINATION

20 BY MR. BRICHLER:

21 Q. Good morning.

22 A. Good morning.

23 Q. Mr. Addison, where are you from?

24 A. Cincinnati, Ohio.

1 Q. The same blue car?

2 A. Yes.

3 Q. And in point of time reference, how many weeks  
4 or days before you were arrested did this occur?

5 A. About two to three weeks.

6 Q. All right.

7 MR. BRICHLER: Your Honor, I have no further  
8 questions at this time.

9 THE COURT: You may cross, Mr. Bishop.

10 MR. BISHOP: May counsel approach side bar,  
11 Your Honor.

12 THE COURT: Yes.

13 SIDEBAR CONFERENCE

14 MR. BISHOP: Your Honor, thank you for this.  
15 As you know I have just been given the Jencks Act  
16 material when --

17 THE COURT: Did you get it earlier this  
18 morning?

19 MR. BISHOP: No, sir, I got as Mr. Addison took  
20 the stand. Can we take the lunch break, so I can  
21 review it, and so I can cross-examine him  
22 effectively?

23 THE COURT: We will take about an hour and half  
24 lunch.

1 to me it all goes hand in hand. The only thing I didn't  
2 tell was about certain incidents containing him, because I  
3 wasn't asked.

4 Q. All right, sir. Thank you, Mr. Addison.

5 MR. BISHOP: No further questions.

6 THE COURT: Any redirect?

7 MR. BRICHLER: No, Your Honor.

8 THE COURT: Thank you, Mr. Addison, you're  
9 excused. Call your next witness please.

10 MR. SPRINGER: The government calls Lashon  
11 Patterson.

12 MR. BISHOP: Your Honor, in anticipation that  
13 Mr. Patterson might be a minute in arriving, could we  
14 take this opportunity to approach the side bar?

15 THE COURT: Yes.

16 SIDEBAR CONFERENCE

17 MR. BISHOP: I don't know for sure, but I will  
18 imagine I'm about to get another package of papers.

19 MR. BRICHLER: No.

20 MR. BISHOP: No stuff this time. Gee, I'm so  
21 disappointed.

22 THE COURT: I want you -- I can understand your  
23 method of questioning on cross-examination. I  
24 understand the technique. I wish you would talk more

1 slowly. It's tough for her and tough for me. I'm  
2 not sure the jury is keeping up with you.

3 MR. BISHOP: I am bit fast sometimes.

4 THE COURT: When you start questioning, I  
5 expect you to talk slowly, too. Ferstah -- ferstah,  
6 do you understand?

7 MR. SPRINGER: Yes, sir.

8 MR. BISHOP: Yes, sir. I was going to ask if  
9 they were going to have another surprise, so that we  
10 could take a break at about the time they finish  
11 their direct, so I can read it?

12 MR. BRICHLER: (Shaking head).

13 THE COURT: Apparently no surprise package. How  
14 long will this witness take?

15 MR. BRICHLER: Twenty minutes, maybe.

16 MR. BISHOP: Thank you. And, again, and I will  
17 try my best.

18 THE COURT: You're doing fine, but I have my  
19 problems and I think you have got to be careful,  
20 because the jury is probably not used to hearing your  
21 voice, or your voice, or the way you question, and so  
22 I think it's got to be a little more slow in  
23 speaking, and with the microphone amplification,  
24 there's an echo, that's the reason I ask that.

1 THE COURT: Jerry who?

2 MR. BISHOP: Hennessey and he was Mr. Gennings'  
3 boss at work during the period of time this took  
4 place.

5 THE COURT: Uh-huh. You're talking about his  
6 reputation, do you mean, as a good worker?

7 MR. BISHOP: I have reputation witnesses as  
8 well. No, what I intend to establish with Mr.  
9 Hennessey is when Mr. Gennings was working and his  
10 hours and so forth, okay. If the Court will permit  
11 me a moment in order to avoid wasting the jury's  
12 time, I'm thinking I could probably call a character  
13 witness.

14 THE COURT: You have someone?

15 MR. BISHOP: Yes, I have someone here, if we  
16 could take a ten-minute break and allow me to get  
17 them over here. They're right down the hall.

18 THE COURT: Are you going to call the  
19 defendant?

20 MR. BISHOP: I will not, unless he forces me  
21 to.

22 THE COURT: Have you made up your mind -- maybe  
23 I should take this time now, I should explain to him  
24 his right to testify, his right not to testify and

1 that he is under no obligation. I think that will  
2 protect you and protect the record by doing that at  
3 this point. Should I excuse the jury for ten minutes  
4 and ask them for a break and we will take that up  
5 during the break, and you can take a few minutes, and  
6 we can get started by the time the character witness  
7 and the other person should be here.

8 MR. BISHOP: Yes, sir.

9 THE COURT: How long do you think this will  
10 take?

11 MR. BISHOP: I expect to do with everything I  
12 need to do by noon, at least.

13 THE COURT: Okay, thank you.

14 CONCLUSION OF SIDEBAR CONFERENCE.

15 THE COURT: We will take a break at this time.  
16 Please remember don't talk about this case or let  
17 anybody talk about it in your presence. Continue to  
18 keep an open mind, and when you come back, we will  
19 proceed with the testimony on behalf of the defense.

20 Counsel will remain, please.

21 THE COURT: I should tell you that there are  
22 menus upstairs from Frisch's, so you can order your  
23 lunch on the government. The idea being that  
24 hopefully we will finish testimony by the latter part

1 defense has no burden at all to present any evidence.  
2 The fact that you don't testify cannot be held  
3 against you. It cannot be communicated to the jury  
4 as a reason for considering your guilt or your  
5 innocence.

6 I'm advised by counsel that you do not plan to  
7 take the stand, and I want to make sure that you  
8 understand, you have the right to testify if you want  
9 to or decide that you don't want to testify, and I  
10 suggest that you follow the advice of your lawyer,  
11 because he's here to protect your interests, but I  
12 want to make sure you understand those rights?

13 THE DEFENDANT: Could I say something to you  
14 first, Your Honor?

15 THE COURT: You do. So whatever you do, you  
16 will be doing on your own volition and on the advice  
17 of your lawyer with regard to testifying.

18 (Defendant's Counsel conferred privately.)

19 THE DEFENDANT: First of all, Your Honor, I  
20 would like to say --

21 THE COURT: I'm sorry can't hear you.

22 THE DEFENDANT: First of all, Your Honor, I  
23 would like to say thank you, because four months ago  
24 I wrote you a letter in regards to this case right

1 here. Certain things were said to me in a plea  
2 agreement. I was forced to say things that I did not  
3 mean, but because I didn't cooperate and say further  
4 things that I did not say or mean, it incriminated me  
5 more, so I just wanted to thank you for giving me the  
6 chance to mention my plea of guilty to innocent, and,  
7 no, I do not want to testify.

8 THE COURT: Okay. Now, if you do testify, the  
9 government can provide rebuttal testimony to your  
10 testimony you understand, so if you don't testify,  
11 then they won't have the opportunity to. Is that  
12 correct, counsel for the government?

13 MR. BRICHLER: That's correct.

14 MR. BISHOP: Thank you, Your Honor.

15 THE COURT: We will be in recess until quarter  
16 after 10:00.

17 MR. BRICHLER: Can we take just a couple  
18 minutes and go through these exhibits real fast?

19 THE COURT: Sure.

20 MR. BRICHLER: We have been kind of keeping  
21 track. I think it might be easier if the government  
22 moves to admit Exhibits 1 through 20 on our list,  
23 some of which have already been admitted, and  
24 according to my records, but I'm re-offering all

**COPY**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

UNITED STATES OF AMERICA : Case No. CR-1-01-009-3  
: (Spiegel, J.)  
vs. :  
: PLEA AGREEMENT  
ISADORE GENNINGS :

- - - - -

It is hereby agreed between Isadore Gennings, individually, and through his attorney, Alvertis W. Bishop, and the United States of America, by and through Robert C. Brichler, Assistant United States Attorney for the Southern District of Ohio, as follows:

1. The defendant shall enter a plea of guilty to Count 1 of the Indictment filed against him charging him with conspiracy to distribute cocaine in violation of 21 U.S.C. §846.

2. The defendant understands that the punishment prescribed by law for the offense charged in Count 1 of the Indictment is a mandatory minimum of 10 years to life in prison, a fine of up to \$4,000,000.00, a five year term of supervised release, and a \$100.00 special assessment.

3. In return for said plea of guilty and contingent upon the defendant's admission of guilt, the United States Attorney for the Southern District of Ohio agrees not to charge this defendant with any other narcotics or money laundering offenses committed prior to this Plea Agreement and disclosed to the government.

4. The government agrees to recommend to the court that the base offense level for purposes of the federal sentencing guidelines is level 32. This recommendation is based upon what the government believes the readily provable facts would establish absent the defendant's cooperation. The government will recommend that the defendant be given a 3 point adjustment for acceptance of responsibility and a four point adjustment for minimal role in the offense.

5. The government agrees to file, upon the defendant's substantial assistance, a motion with the court for a downward departure from the guideline sentence, stating that the defendant has made a good faith effort to provide substantial assistance in the investigation and prosecution of other persons who have committed offenses. The filing of such motion shall be in the sole discretion of the United States Attorney for the Southern District of Ohio. If such a motion is filed, the defendant understands that it is not binding on the court. Such a motion is authorized by § 5K1.1 of the Sentencing Guidelines and 18 U.S.C. § 3553(e). If such motion is filed it will be in reliance on the defendant's continued cooperation. If the defendant should later refuse to testify the government may, at the governments' option, petition the court to set aside the defendant's sentence and sentence him without a downward departure or seek to set aside the defendant's plea and reinstate the Indictment.

6. The defendant understands that the Probation Department will conduct a pre-sentence investigation and will recommend to the Court a sentencing guideline range. The defendant understands that the Probation Department's recommendations are not binding on the Court and the terms of this Plea Agreement are not binding upon the Court or Probation Department. The defendant understands that if the court does not follow the recommendations contained in this plea agreement he does not have the right to withdraw his plea of guilty.

7. The defendant understands that there is no agreement concerning his ultimate sentence. The defendant could receive the maximum penalty provided by law.

8. Prior to or at the time of sentencing, the defendant will pay to the United States Department of Justice, a special assessment in the amount of \$100.00, as required by Title 18, United States Code, Section 3013.

9. This is the entire Plea Agreement. There are no other provisions or understandings.

SHARON J. ZEALEY  
United States Attorney

\_\_\_\_\_  
Date

\_\_\_\_\_  
ROBERT C. BRICHLER  
Assistant U.S. Attorney

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF OHIO

U.S. Probation Office

David E. Miller

Chief U.S. Probation Officer

Joseph P. Kinnear U.S. Courthouse  
85 Marconi Boulevard, Room 546  
Columbus, Ohio 43215-2398  
Phone 614-719-3100  
Fax 614-469-2579

Reply To Cincinnati office



110 Potter Stewart U.S. Courthouse  
100 East Fifth Street  
Cincinnati, Ohio 45202-3980  
Phone 513-564-7575  
Fax 513-564-7587

702 Federal Building  
200 West Second Street  
Dayton, Ohio 45402-1411  
Phone 937-512-1450  
Fax 937-225-2755

February 27, 2002

Alvertis W. Bishop, Jr., Esq.  
Suite 1300  
30 East Central Parkway  
Cincinnati, Ohio 45202  
(513) 241-2025

RE: Gennings, Isadore  
Final Presentence Investigation Report

Dear Mr. Bishop,

Attached are the changes made to the Initial Presentence Report for Mr. Gennings, and the Addendum. As noted in our telephone conversation earlier today, I have added some new paragraphs to the Offense Conduct section, and I gave Mr. Gennings a two level reduction for having played a minor role, rather than a four level minimal role reduction. I have circled the paragraphs that have either been added or changed.

The official Final PSI will be mailed to you February 28, 2002. If you have any questions or comments, I may be reached at 513-564-7564.

Sincerely,

A handwritten signature in black ink, appearing to read "T. A. Barbeau".

Thomas A. Barbeau  
United States Probation Officer

cc: Robert C. Brichler, Esq.  
Assistant United States Attorney

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

RECEIVED

JUL 26 2001

FILED  
KENNETH J. MURPHY  
CLERK

01 JUL 26 PM 12:31

U.S. DISTRICT COURT  
SOUTHERN DIST OHIO  
WEST DIV CINCINNATI

UNITED STATES OF AMERICA,

NO. CR-1-01-009-3

Plaintiff,

v.

ORDER

ISADORE GENNINGS,

Defendant.

Judge	4812
Mag.	
Journal	
Issues	CMTC USM
USP PTS	
Docketed	W

This matter is before the Court on Defendant Isadore Genning's Motion for Leave to Withdraw Plea of Guilty (doc. 56) and the Government's Response (doc. 59).

Defendant plead guilty to one count of conspiracy to distribute in excess of five kilograms of cocaine in violation of 21 U.S.C. §§ 841 & 846. On June 25, 2001, Defendant filed a Motion for Leave to Withdraw his plea of guilty. The Government filed a Response on June 28, 2001.

In his Motion, Defendant notes that he has maintained from the outset of this case that he was unaware of the criminal enterprise in which the principal co-defendants were engaged (doc. 56). According to Defendant, he was informed variously by his attorney and pretrial services that the potential penalty for the crime of which he was accused was life in prison (*Id.*). Defendant contends that his fear of serving a life sentence caused him to conclude that a negotiated plea and reduced sentence was preferable to maintaining his innocence and going to trial (doc. 56).

69

Furthermore, Defendant contends that he is innocent of the crimes for which he is charged.

The Government opposes this Motion (doc. 59). In their Motion, the Government contends that Defendant merely made a strategic choice which he now regrets (Id.). The Government contends that Defendant is no stranger to the criminal justice system and that he made his plea knowingly and willingly (Id.). The Government maintains that the record from the Rule 11 plea hearing makes it clear that the Defendant was not under duress when he offered his plea and admitted his guilt (Id.). Finally, the Government contends that Defendant has admitted his guilt in a proffer signed February 5, 2001 (Id.).

This issue is governed by Rule 32(e) of the Federal Rules of Criminal Procedure. Rule 32(e) provides:

If a motion to withdraw a plea of guilty or nolo contendere is made before sentence is imposed, the court may permit the plea to be withdrawn if the defendant shows any fair and just reason. At any later time, a plea may be set aside only on direct appeal or by motion under 28 U.S.C. § 2255.

Fed. R. Crim. P. 32(e). It is well settled that permission to withdraw a guilty plea prior to sentencing is not a right, but is a matter within the broad discretion of the District Court. United States v. Goldberg, 862 F.2d 101, 103 (6<sup>th</sup> Cir. 1988).

The Sixth Circuit Court of Appeals has developed a seven-part test for use by district courts in evaluating whether a defendant has established a "fair and just" reason to withdraw his guilty plea. United States v. Bashara, 27 F.3d 1174, 1180-81 (6<sup>th</sup>

Cir. 1994). This test considers the following seven factors: 1) the length of time between the entry of the guilty plea and the filing of the motion to withdraw it; 2) reasons why the grounds for withdrawal were not presented to the court earlier; 3) whether the defendant has maintained his innocence during plea bargaining and at the time of his plea; 4) the circumstances of the entry of the plea; 5) the nature and background of the defendant; 6) the degree to which the defendant has had prior experience with the criminal justice system; 7) potential prejudice to the government if the motion is granted. Id.

The policy behind Rule 32(e) "is to allow a hastily entered plea made with unsure heart and confused mind to be undone, not to allow a defendant to make a tactical decision to enter a plea, wait several weeks, and then obtain a withdrawal if he believes that he made a bad choice in pleading guilty." United States v. Alexander, 948 F.2d 1002 (6<sup>th</sup> Cir. 1991).

Reviewing these factors, the Court concludes that on the whole, the factors listed above lean in favor of allowing a withdrawal of plea. Defendant did wait approximately ten weeks after changing his plea to guilty before filing the current Motion and has not offered a reason for not bringing this Motion to the Court sooner. Defendant has, however, maintained his innocence both before and after his plea of guilty, although he did acknowledge guilt at the change of plea hearing. Defendant maintains that his fear of going to prison for life influenced his decision and clouded his judgment. Furthermore, the nature and

background of Defendant suggest that he has been a fairly stable citizen. Defendant's Pre-Sentence Report indicates that he has worked with the same supervisor at both Tire Discounters and Michel Tire Company and that his supervisor described him as "very dependable and loyal." Defendant contends that he currently works at two jobs.


Aside from a single arrest in Illinois in 1994, more than 7 years ago, Defendant does not appear to have an extensive criminal record. The Court does not agree with the Government's contention that "defendant's familiarity with the criminal justice system leads one to believe his plea was knowing, voluntary, not coerced, and not subject to withdrawal." The Court only has a record of a single criminal conviction over seven years ago. The Court has no record of whether or not Defendant plead guilty to that offense or was convicted by a jury. The Court also does not have any information regarding whether Defendant was represented by an attorney in that case. Accordingly, the Court is not able to say that this conviction educated Defendant as to the intricacies of the criminal justice system. Finally, the Court concludes that granting Defendant's Motion would not be prejudicial to the Government. The Court concludes, therefore, that on the whole these factors operate in favor of granting Defendant's Motion.

Having reviewed this matter, the Court concludes that the interests of justice demand that Defendant get a chance to present his case to a jury. Upon reviewing Defendant's statements, the Court has determined that Defendant has been consistent in his

explanation of the events leading to his arrest. Finally, the Court has determined that the policy of Rule 32(e) to allow withdrawal of "plea[s] made with unsure heart and confused mind" operates in favor of allowing Defendant to withdraw his plea. Therefore, Defendant has presented "fair and just" reasons for granting his Motion. Accordingly, the Court hereby GRANTS Defendant's Motion to Withdraw Plea (doc. 56). This case is hereby SCHEDULED for arraignment on July 31, 2001 at 10:00 A.M.

SO ORDERED.

Date: 7/24/01

  
\_\_\_\_\_  
S. Arthur Spiegel  
United States Senior District Judge

~~Wed.~~  
Thurs 2:00 p.m.  
Perkins